

**252.225-7017 Photovoltaic Devices.**

As prescribed in 225.7017-4(a), use the following clause:

**PHOTOVOLTAIC DEVICES (AUG 2012)**

(a) *Definitions.* As used in this clause—

*Bahrainian photovoltaic device* means an article that—

- (i) Is wholly manufactured in Bahrain; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Canadian photovoltaic device* means an article that has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Caribbean Basin country photovoltaic device* means an article that—

- (i) Is wholly manufactured in a Caribbean Basin country; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Designated country* means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania,

Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

*Designated country photovoltaic device* means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

*Domestic photovoltaic device* means a photovoltaic device manufactured in the United States.

*Foreign photovoltaic device* means a photovoltaic device other than a domestic photovoltaic device.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore.

*Free Trade Agreement country photovoltaic device* means an article that—

- (i) Is wholly manufactured in a Free Trade Agreement country; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Korean photovoltaic device* means an article that—

- (i) Is wholly manufactured in Korea; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Least developed country photovoltaic device* means an article that—

- (i) Is wholly manufactured in a least developed country; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Moroccan photovoltaic device* means an article that—

- (i) Is wholly manufactured in Morocco; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Peruvian photovoltaic device* means an article that—

- (i) Is wholly manufactured in Peru; or
- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Photovoltaic device* means a device that converts light directly into electricity through a solid-state, semiconductor process.

*Qualifying country* means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Italy
Austria	Luxembourg
Belgium	Netherlands
Canada	Norway
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of
Greece	Great Britain and
Israel	Northern Ireland

*Qualifying country photovoltaic device* means a photovoltaic device manufactured in a qualifying country.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*U.S.-made photovoltaic device* means a photovoltaic device that—

- (i) Is manufactured in the United States; or
- (ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*WTO GPA country photovoltaic device* means an article that—

- (i) Is wholly manufactured in a WTO GPA country; or

- (ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than \$3,000 but less than \$25,000, then the Contractor shall utilize only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(2)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation;

(2) \$25,000 or more but less than \$77,494, then the Contractor shall utilize in the performance of this contract only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of Canadian or other foreign photovoltaic devices in paragraph (c)(3)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, the Contractor shall utilize a qualifying country photovoltaic device, a Canadian photovoltaic device, or, at the Contractor's option, a domestic photovoltaic device;

(3) \$77,494 or more but less than \$100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device;

(4) \$100,000 or more but less than \$202,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device; or

(5) \$202,000 or more, then the Contractor shall utilize under this contract only U.S.-made, qualifying country, or designated country photovoltaic devices.

(End of clause)

[76 FR 78861, Dec. 20, 2011, as amended at 77 FR 13013, Mar. 5, 2012; 77 FR 30357, 30361, May 22, 2012; 77 FR 31537, May 29, 2012; 77 FR 38737, June 29, 2012; 77 FR 52254, Aug. 29, 2012]

#### 252.225-7018 Photovoltaic Devices—Certificate.

As prescribed in 225.7017-4(b), use the following provision:

##### PHOTOVOLTAIC DEVICES—CERTIFICATE (MAY 2012)

(a) *Definitions.* Bahrainian photovoltaic device, Canadian photovoltaic device, Caribbean Basin photovoltaic device, designated country, domestic photovoltaic device, foreign photovoltaic device, Free Trade Agreement country, Free Trade Agreement photovoltaic device, Korean photovoltaic device, least developed country photovoltaic device, Moroccan photovoltaic device, Peruvian photovoltaic device, photovoltaic device, qualifying country, qualifying country photovoltaic device, United States, U.S.-made photovoltaic device, and WTO GPA country photovoltaic device have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) *Restrictions.* The following restrictions apply, depending on the estimated value of any photovoltaic devices to be utilized under a resultant contract:

(1) If more than \$3,000 but less than \$202,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (c)(2)(ii), (c)(3)(ii), or (c)(4)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If \$202,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Certification and identification of country of origin.* [The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]

(1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value of \$3,000 or less.

(2) If more than \$3,000 but less than \$25,000—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a qualifying country photovoltaic device [Offeror to specify country of origin \_\_\_\_\_]; or

(ii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_\_\_. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.]

(3) If \$25,000 or more but less than \$77,494—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country photovoltaic device; or a Canadian photovoltaic device [Offeror to specify country of origin \_\_\_\_\_]; or

(ii) The foreign (other than qualifying country or Canadian) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_\_\_. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.]

(4) If \$77,494 or more but less than \$100,000—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, or Peruvian photovoltaic device) [Offeror to specify country of origin \_\_\_\_\_]; or

(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c)(4)(i) of this provision) are